

Prob 12C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**PETITION FOR WARRANT OR SUMMONS FOR
OFFENDER UNDER SUPERVISION**

Offender Name: Jose CURIEL
Docket Number: 2:98CR00353-02
Offender Address: Sacramento, California
Judicial Officer: Honorable Garland E. Burrell, Jr.
United States District Judge
Sacramento, California
Original Sentence Date: 06/25/1999
Original Offense: 21 USC 841(a)(1) - Possession With Intent To
Distribute Methamphetamine
(CLASS A FELONY)
Original Sentence: 44 months custody Bureau of Prisons; 60 months
Supervised Release; \$100 special assessment
Special Conditions: Search; Financial disclosure; Substance abuse
counseling, to include testing, and pay associated
costs; Pager/cellular telephone restrictions
Type of Supervision: Supervised Release
Supervision Commenced: 10/08/2001
Assistant U.S. Attorney: Kenneth J. Melikian **Telephone:** (916) 554-2700
Defense Attorney: Rachelle Barbour **Telephone:** (916) 498-5700
Assistant Federal Defender

RE: Jose CURIEL
Docket Number: 2:98CR00353-02
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Other Court Action:

- 11/18/2002:** Prob 12C Petition filed: Illicit Drug Use (Cocaine); Failure To Participate In Drug Testing
- 12/20/2002:** Disposition: Releasee admitted Charges 1 and 2; Continued on Supervised Release with additional special conditions: Alcohol abstinence; 120 days home detention with electronic monitoring.
- 08/19/2003:** Prob 12C Petition filed: Illicit Drug Use (Cocaine)
- 10/24/2003:** Disposition: Releasee admitted Charge 1 of the Petition; Continued on Supervised Release with additional special conditions: Participate and reside in a residential community corrections center (CCC) for a period of three months.
- 02/13/2004:** Prob 12C Petition filed: Illicit Drug Use (Cocaine)
- 02/27/2004:** Disposition: Court approved modification to extend the releasee's CCC commitment 60 additional days.

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PETITIONING THE COURT

- (X) **OTHER:** Place this on the Court's calendar on September 30, 2005, at 9 a.m., and order the releasee to appear before the Court to show cause why supervision heretofore granted should not be revoked. The probation officer is directed to notify the releasee and counsel of said hearing.

The probation officer alleges the releasee has violated the following condition(s) of supervision:

Charge Number **Nature of Violation**

Charge 1: USE OF ILLICIT DRUGS (COCAINE)

On July 14, 2005, the releasee submitted a urine sample which tested positive for cocaine. This conduct is in violation of the Court's order requiring him to refrain from any unlawful use of a controlled substance.

Justification: This is the fourth time the Court has been notified of the releasee's use of illegal drugs. He continues to abuse cocaine despite intermediate sanctions (home detention and community corrections center placement) imposed by the Court. Court sanctions have not impacted him or been a deterrent in any way. His continued drug use would suggest a more serious problem requiring either incarceration or inpatient drug treatment. To his credit, he continues to maintain attendance in college and full-time employment.

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Bail/Detention: Because the releasee is not viewed as an imminent danger to the community, and is not considered a flight risk, it is recommended he be allowed to remain at liberty pending formal revocation proceedings in this matter.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON: August 23, 2005
Roseville, California
srs:cd

Respectfully submitted,

/s/ Shari R. Simon

SHARI R. SIMON
United States Probation Officer
Telephone: (916) 786-2861

REVIEWED BY: _____ /s/ Richard A. Ertola
RICHARD A. ERTOLA
Supervising United States Probation Officer

RE: Jose CURIEL
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THE COURT FINDS PROBABLE CAUSE AND ORDERS:

- () The issuance of a warrant () Bail set at \$ ___ () No Bail
- () The issuance of a summons (copy to Defense Counsel).
- (X) Other: Place this on the Court's calendar on September 30, 2005, at 9 a.m., and order the releasee to appear before the Court to show cause why supervision heretofore granted should not be revoked. The probation officer is directed to notify the releasee and counsel of said hearing.

FURTHER PROCEEDINGS REGARDING CUSTODY:

- () Defendant is ordered detained, to be brought before District Judge forthwith.
- () Initial appearance and detention hearing before Magistrate Judge.

DATED: August 25, 2005

/s/ Garland E. Burrell, Jr.
GARLAND E. BURRELL, JR.
United States District Judge

cc: United States Probation
Rachelle Barbour, Assistant United States Attorney
Kenneth J. Melikian, Assistant Federal Defender

Attachment: Presentence Report (Sacramento only)

**STATEMENT OF EVIDENCE OF ALLEGED
SUPERVISED RELEASE VIOLATIONS**

Honorable Garland E. Burrell, Jr.
United States District Judge
Sacramento, California

**RE: Jose CURIEL
Docket Number: 2:98CR00353-02**

Your Honor:

In addition to a copy of the **Prob 7A - Conditions of Probation or Supervised Release**, the following evidence and/or testimony will be offered to support the probation officer's allegation that the above-named releasee is in violation of the conditions of supervision as stated on the attached Prob 12C - Petition for Warrant or Summons for Offender Under Supervision.

Charge 1: USE OF ILLICIT DRUGS (COCAINE)

A. Evidence:

- (1) Quest Laboratory Report Number A00174347, dated 07/14/2005

B. Witnesses:

- (1) None

**RE: Jose CURIEL
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STATEMENT OF EVIDENCE**

Respectfully submitted,

/s/ Shari R. Simon

**SHARI R. SIMON
United States Probation Officer**

DATED: August 23, 2005
Roseville, California
srs:cd

REVIEWED BY: _____ /s/ Richard A. Ertola
**RICHARD A. ERTOLA
Supervising United States Probation Officer**

REVOCATION GUIDE - SUPERVISED RELEASE

Offender Name: Jose CURIEL

Docket Number: 2:98CR00353-02

Date of original offense: 06/25/1999

Original term of supervised release imposed: 5 years.

Highest grade of violation alleged: C

Criminal History Category of offender: I

Chapter 7 range of imprisonment: 3 to 9 months.

Maximum term on revocation - 18 USC 3583(e)(3): (choose one below)

- Class A felony - 5 years (or stat max of 5 years if longer).
- Class B felony - 3 years
- Class C and/or D felony - 2 years
- Class E felony and misdemeanors: 1 year

Violation requires mandatory revocation: YES: NO: .

Original offense committed after 09/13/94: Court may sentence up to the statutory maximum term of supervised release applicable to the original offense of conviction, but not exceed the maximum for the classes of offenses noted above. Court must consider but is not bound by Chapter 7 ranges. Upon revocation, the court may re-impose supervised release; however, the term is limited to the statutory maximum authorized under Title 18 USC 3583(e)(3) for the original offense of conviction, less the term of imprisonment imposed upon revocation.

MANDATORY REVOCATION ISSUES

Original offense committed after 09/13/94: Title 18 USC 3583 instructs that supervision shall be revoked upon a finding of: 1) Possession of a controlled substance; 2) Possession of a firearm; or, 3) Refusal to comply with mandatory drug testing. If the violation involves the use of a controlled substance, the Court has the discretion to find that "use" constitutes "possession."

Positive/Failed Drug Tests after 11/02/2002: Title 18 USC 3583(g) amended and instructs that supervision be revoked for: Testing positive for illegal controlled substances more than three times over the course of one year.

srs:cd (08/23/2005)